CR 4899 of 2005

Mr.Sandeep Khunger, Advocate, for the petitioners

On request, adjourned to 01-12-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

RSA 3006 of 2003

Mr.A.S.Gill, Advocate, for the appellant

Mr.Baljit Puri, Advocate, for the respondents

On the request of the learned counsel for the parties, adjourned to 01-12-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 4294 of 2005

Mr.Harkesh Manuja, Advocate, for the petitioner

Admitted.

Stay recovery against the petitioner in the meantime.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 4027 of 2005

Mr.Rameshwar Malik, Advocate, for the petitioner

Admitted.

To be heard alonghwith RSA 4900 of 2004.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CM 10077-C of 2005 in

RSA 3755 of 2005

Mr.Baljit Puri, Advocate, for Mr.Kuldip Sanwal, Advocate, for the appellants

Mr.Naveen Kumar, Advocate, for the respondents

After hearing the learned counsel for the parties,order dated 21-10-2005 is made absolute.

CM stands disposed of.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

COCP 813 of 2006

Mr.Arun Nehra, Advocate, for the petitioners

Learned counsel for the petitioners wishes to withdraw the present petition.

Dismissed as withdrawn.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 3450 of 2005

On written request, adjourned to 10-11-2006.

{Hemant Gupta}
Judge

24-10-2006

- Mandeep *

- CM 5972-C of 2005 in
  RSA 2259 of 2005

Mr.R.P.S.Ahluwalia, Advocate, for the appellants

Mr.Deepak Garg, Advocate, for respondent No.11

As per office report, respondents 2,3, 8, 9,10, 11, 12, 13 have been served. Unserved respondents 4 to 7 are legal heirs of one Hans Raj. Respondents 1 to 3 are the one who are also representing the estate of Hans Raj. Therefore, for the purpose of the present application, service upon respondents 4 to 7 is dispensed with.

Adjourned to 10-11-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 6046 of 2004

Mr.Ram Bilas, Advocate, for the petitioner

Mr.Gurcharn Singh, Advocate, for respondents 2, 3, 4, 5 and 7

Notices issued to respondents 1 and 8 through their counsel before the trial Court have not been received back served or otherwise.

Let fresh notices be issued to the said respondents for 05-12-2006. Process dasti also.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 4215 of 2005

Mr.Sanjiv Gupta, Advocate, for the petitioner

Inter alia contended that the decree against the petitioner is void having passed against the defendants as minors in respect of whom an application for appointment of Guardian under Order 32 CPC was not filed.

Admitted.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

RSA 4039 of 2004

Mr.R.A.Shoeran, Advocate, for the appellants

Mr.Y.P.Singh, Advocate, for respondent No.1

Learned counsel for the appellants seeks some time to find out the status of the suit challenging consent decree dated 17-10-1990 filed by the appellants subsequently.

Adjourned to 16-01-2007.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

COCP 674 of 2004

Mr.Sanjeev Kaushik, Advocate, for the petitioner

Mr.Santosh Sharma, Advocate, for the respondent

At the request of the learned counsel for the parties, adjourned to 05-12-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

COCP 692 of 2004

Mr.Sanjeev Kaushik, Advocate, for the petitioner

Fresh notice be issued to the respondent for 05-12-2006.Since counselrepresenting the respondent has been elevated as Judge of this Court, therefore, notice is required to be issued without any process fee.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CM 18644-CII of 2006

Mr.P.S.Khurana, Advocate, for the petitioner

Mr.H.N.S.Gill, Advocate, for the respondents

At the request of the learned counsel for the respondents, adjourned to 17-11-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CM 11321-CII of 2006

Mr.R.K.Shukla, Advocate, for the petitioner

On request, adjourned to 01-12-2006.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CR 3652 of 2004

Mr.S.S.Kharb, AAG, Haryana

Mr.R.K.Gupta, Advocate, for the respondent

The application is to correct date 19-04-2003 and 20-04-2003 in the order dated 13-01-2005. It is pointed out that the discharge of severage has been stopped on 19-04-2002 whereas date has been mentioned as 19-04-2003 in the order on account of some mistake. Reliance is placed upon the statement of SDO, Public Health given before the learned Executing Court on 28-07-2003.

In view of the said factual aspect, the order dated 13-01-2005 is ordered to be corrected so as to read 19-04-2002 in place of 19-04-2003 and 20-04-2002 in place of 20-04-2003.

CM stands disposed of accordingly.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

RSA 419 of 2006

Mr.Arun Palli, Advocate, for the appellant

Mr.Parminder Singh, Advocate, for respondents 1 and 2

After hearing the learned counsel for the parties, interim ordersdated 21-03-2006 and 01-09-2006 are made absolute.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

CM 14184-CII of 2006

Mr.Vijay Sharma, Advocate, for the petitioner

The petitioner has sought transfer of proceedings under Section 9 of the Hindu Marriage Act ,1955(hereinafter referred to as the Act) initiated by the respondent pending in the Court of Smt.Anshul Berry,Addl.Civil Judge,Senior Division,Sunam.

It is contended that the marriage between the parties was solemnised on 12-12-1993 at Patiala and in-laws of the petitioner started demanding dowry. The respondent misbehaved with her after taking liquor and used foul language .The petitioner was turned out of her matrimonial home in January, 2006 and she had lodged a complaint on 23-04-2006 with police station, Sunam, in district Patiala and proceedings under Sectioins 107 and 151 CPC were initiated against the respondent.

It is also pointed out that the petitioner had filed a petition under Section 13 of the Act at Patiala on 23-04-2006 whereas the respondent had filed a petition under Section 9 of the Act on 26-05-2006 at Sunam.

Keeping in view the fact that the petitioner had filed petition for dissoloution of marriage earlier in point of time than petition under Section 9 of the Act, therefore,in terms of the provisions of Section 21-A of the Act , the petition under Section 9 is ordered to be transferred to the Court of Mr.Kuldeep Singh, the learned additional District Judge, Patiala, where petition under Section 13 of the Act at the instance of the petitioner is pending.

Parties through their counsel are directed to appear before Mr.Kuldeep Singh, Additional District Judge, Patiala on 09-11-2006.

CM is accordingly allowed.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4823 OF 2004

DATE OF DECISION;24-10-2006

Gurpal Singh & another v Piara Singh & others

Mr.J.S.Brar, Advocate, for the petitioners

Mr.Kamaldeep Singh, Advocate, for respondent No.13

HEMANT GUPTA, J.

The plaintiffs are in revision aggrieved against the order dated 30-08-2003 whereby an application filed by the petitioners for correction of date ofdeath of deceased-Bohar Singh, Manjit Kaur and Lakhbir Singh as 31-12-1999 instead of 01-01-2000 was declined.

The learned trial Court has declined such application on the ground that it is an attempt to delay the proceedings and amendment cannot be allowed after the trial has commenced as the Court can allow amendment only after arriving at a conclusion that inspite of due diligence, the party could not raise the matter before commencement of the trial.

The reasoning given by the learned trial Court suffers from patent illegality and irregularity. The suit was filed on 15-02-2000 and, therefore, the amended provisions of CPC contained in Order 6 Rule 17 CPC are not applicable in respect of pleadings filed prior to the said amendment in terms of Section 16(2)(b) of Code of Civil Procedure(Amendment)Act,2002. The plaintiffs have sought declaration on account of the deaths of Bora Singh, Manjit Kaur and Lakhbir Singh. By amendment, the plaintiffs are not to gain anything except to bring the facts in correct perspective. Still further it is the plaintiff who has sought the correction of date of death.

Therefore, I am of the opinion that the order passed by the learned tiral Court decling the correction in the date of death is not sustainable in law.

Consequently, the said order is set aside. The petitioners are permitted to amend the pleadings so as to describe the date of death as 31-12-1999 instead of 01-01-2000.

Civil revision stands disposed of accordingly.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 5241 OF 2004

DATE OF DECISION:24-10-2006

Jay Bee International v The Shipping Corporation of India & others

CORAM: HEMANT GUPTA, J.

Mr.Harkesh Manuja, Advocate, for the petitioner

Mr.Sumeet Goel, Advocate, for respondent No.1

The challenge in the present petition is to the order dated 12-10-2004 whereby an application filed by the plaintiff for permission to lead additional evidence so as to produce registration forms A & C issued by the Registrar of firms was declined.

It is the case of the plaintiff that such documents were misplaced and, therefore, could not be produced when the plaintiff was leading its evidence and that such documents are per se admissible. Keeping in view the fact that the forms A & C are the documents which are per se admissible and, therefore, the plaintiff-petitioner should have been permitted to produce such documents as these are necessary to file a suit in the name of partnership firm. By producing such documents, the plaintiff is not likely to delay any proceedings as no further time is required to prove such document.

In view of this, I am of the opinion that the order passed by the learned trial Court cannot be sustained in law.Accordingly, the said order is set aside. The plaintiff is permitted to produce the forms A & C in additional evidence in accordance with law.

With the above directions, this petition is disposed of.

{Hemant Gupta}
Judge

24-10-2006

* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 1909 OF 2005

DATE OF DECISION : 24-10-2006

Amritsar Improvement Trust v Ashish Kakkar & others

Mr.H.S.Toor, Senior Advocate, with Mr.Ashwani Bansal, Advocate, for the petitioner

Mr.Arun Jain, Advocate, for the respondents

CORAM : HEMANT GUPTA, J.

This order shall dispose of Civil Revisions Nos. 1909 to 1916 of 2005 directed against the order dated 07-01-2005 passed by the Commissioner, Jalandhar.

It is the case of the petitioner that earlier the respondents herein filed an application under Sections 8 and 9 of the Arbitration and Concilliation Act, 1996 (hereinafter referred to as the Act) in the Court of Civil Judge, Senior Division, Amritsar. The learned trial Court dismissed the petition under Section 9 of the Act. Revision against the said order was also dismissed by this Court. The matter was taken before the Honourable Supreme Court of India wherein the Hon'ble Supreme Court permitted respondent No.1 herein to deposit the entire principal amount. Subsequently, vide resoloution No.29, the Improvement Trust resolved to resume the shop in dispute on the grounds of misuse and non payment. The said action of the Trust was made the subject matter of challenge in the writ petition before this Court. However, the Division Bench of this Court directed the dispute to be referred for arbitration for decision.

In pursuance of the said direction, the matter was referred to the Commissioner, Jalandhar, in terms of clause 13 of the agreement. The learned Commissioner has passed an order on 07-01-2005. The said order has been challenged by the petitioner before this Court on the ground that the Commissioner has not announced the award as contemplated under the Act, therefore, the said order is not sustainable in law.Learned counsel for the petitioner has also sought to dispute

the decision of the Arbitrator on merits.

Once the parties have decided to resolve their dispute through arbitration and the Arbitrator appointed to resolve the dispute, has rendered his decision then his decision cannot be made as subject matter of challenge in proceedings under Article 227 of the Constitution of India. Merely because the learned Arbitrator has not used word "Award" in his decision, shall not render such decision amenable to the jurisdiction of this Court. The petitioner has the remedy against the said decision in terms of the Act.

It shall be open to the petitioner to take recourse to its remedy as may be available to them in accordance with law.

Dismissed as not maintainable.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 2680 OF 2005

DATE OF DECISION :24-10-2006

Harwinder Singh v Kuldeep Kaur

CORAM : HEMANT GUPTA,J.

Mr.R.C.Dogra, Senior Advocate, with Mr.S.K.Bawa, Advocate, for the petitioner

Mr.Hitesh Kapilish, Advocate, for the respondent

The challenge in the present petition is to the order passed by the learned Rent Controller on 09-04-2005 whereby petition filed by the respondent under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 as amended was allowed.

It is the case of the respondent-landlady that she is an Non-Resident Indian and has gone to Austaria along with her husband but now she and her husband are old and intend to lead a retired life and, therefore, she has returned to India in order to live in India. It has been found by the learned Rent Controller , after the application for leave to defend was allowed and evidence led ,that there are 5 rooms on the ground floor, one tin roof kitchen on the first floor. That the landlady intends to add more rooms on the ground floor . She has also got vacated 3 shops which have been converted as part of residential premises. Therefore, it was found that the premises are required for bonafide use as even daughter of the landlady along with her children is also going to reside with her.

Learned counsel for the petitioner has vehemently argued that the requirement pleaded in the petition was of landlady alone whereas finding has been recorded by the Rent Controller that the premises are required for her daughter and her family as well. A perusal of the site plan Exhibit P-4 shows that small area measuring 8'x14' alone is in possession of the petitioner. The remaining building is in possession of the landlady. The landlady has a right to lead peaceful life comfortably in her house and not that she must share a part of accommodation with the tenant.The

landlady is entitled to privacy and comforts of her house. Therefore, I do not find any illegality or irregularity in the findings recorded by the learned Rent Controller which may warrant interference by this Court.

Dismissed.

However, the order of ejectment shall not be executed for a period of 3 months from today provided petitioner furnishes undertaking by way of affidavit before the Rent Controller within 2 weeks from today to handover the physical possession of the property to the landlady on or before January 31,2007,and on payment the entire arrears of rent within 2 weeks. The further monthly rent shall be payable by 10th of each month.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4307 OF 2005

DATE OF DECISION : 24-10-2006

The Gurgaon Central Coop.Bank v P.O.Labour Court etc.

Mr.Subhash Ahuja, Advocate, for the petitioner

Mr.Pankaj Jain, Advocate, for the respondents

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 13-07-2005 whereby an application filed by the petitioner for setting aside the ex-parte proceedings initiated on 06-08-2003 was dismissed.

The learned Labour Court found that reference is pending since the year 1999 and the case is fixed for filing of written statement since 20-09-2001.It has been found that 06-08-2003 was the date fixed for filing written statement subject to payment of Rs.1000/-as costs but since neither costs had been paid nor written statement had been filed, therefore, ex-parte proceedings have been rightly initiated against the petitioner . Therefore, the application was found to be without any merit.

Learned counsel for the petitioner has contended that though there is delay in filing the written statement but it is undertaken that the petitioner shall file written statement on the date fixed and also compensate the respondent-workmen for the delay in filing of the written statement by way of payment of costs in additional costs as ordered by the learned Labour Court. It is also pointed out that no evidence has been led by the workmen even after initiating ex-parte proceedings against the petitioner.

Keeping in view the fact that no evidence has been led even though the ex-parte proceedings were initiated against the management on 06-08-2003, I deem it appropriate to set aside the ex-parte proceedings subject to payment of Rs.5000/-as costs. The parties through their counsel are directed to appear before the Labour Court on 27-11-2006 on which date the petitioner shall file its written statement and also shall pay costs of Rs.5000/-along with costs as imposed by the learned Labour

Court earlier. If written statement and costs are not paid on the said date, the ex-parte proceedings shall remain operative.

With the said direction, the present revision is disposed of.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *